UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/508,750	04/15/2005	Andrew Moore	P/63624	8353

156   7590   03/12/2010
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EXAMINER
SMITH, JOSHUA Y

ART UNIT	PAPER NUMBER
2477	

NOTIFICATION DATE	DELIVERY MODE
03/12/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

AI@KIRSCHSTEINLAW.COM
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PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	*10/508,750*	MOORE, ANDREW
	Examiner	**Art Unit**	
	JOSHUA SMITH	2477	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>25 February 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒   The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐   The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: <u>*13*</u>.

   Claim(s) rejected: <u>*9,10 and 14-16*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

Joshua Smith
/J.S./
03-09-2010

/Gregory B Sefcheck/
Primary Examiner, Art Unit 2477

Continuation of 11. does NOT place the application in condition for allowance because: Applicant submits that the missing formula has been re-inserted into claim 13. Examiner respectfully notes that the formula is still missing from claim 13 in the claims filed on 02/25/2010.

The argument that Davis discloses comparing individually each of the two error comparison signals with their corresponding thresholds, and that in claim 9, in order to determine which one of two values is the greater one, the two values must be compared with each other, and not against their thresholds, is not persuasive. Examiner notes that in claim 9, one demand estimate is described as "short-term burstiness within a traffic envelope", and the other demand estimate is described as "long-term variance between traffic envelopes". Claim 9 does not contain limitations that clearly shows HOW these two disparate demand estimates are compared. Although claim 9 indicates that the "greater" of the two demand estimates gives the worst case demand, it is not clearly claimed HOW "short-term burstiness" and "long-term variance" are compared. As a result, a reasonable interpretation of the "greater" of two estimates that gives the estimated worst case is the estimate that exceeds a respective acceptable threshold.

The argument that by applying the teaching of Davis to bandwidth demand without any support in the disclosure, the Examiner reads more from Davis than is disclosed therein, and Giroux and Qiu are not concerned with error counts, and person skilled in the art, when having access to Giroux and Qiu and to Davis, would not add Davis to the combined teachings of Giroux and Qiu, because Davis deals with a problem that is not discussed at all by Giroux and Qiu, is not persuasive. Examiner notes that Davis teaches in column 6, lines 25-32, a data rate slowdown request signal is generated in response to both large error bursts and lower levels of errors that are sustained over an extended time period. This shows that Davis is using the measurement of long-term and short-term error counts to determine when a data rate is too high for requesting a data rate slowdown. As a result, Davis is measuring demand in the form of a data rate, and is measuring when a data rate is too high by using error counts, and a person of ordinary skill at the time of the invention could combine such data rate demand measurements of Davis with the teachings of Giroux and Qiu.